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Headquarters

Maryland State Department of Education

Response to the Analyst's Review and Recommendations
February 25, 2004

ISSUES

- 1. Maryland State Department of Education Scheduled to Assume Responsibility for Educational Programs at Charles H. Hickey, Jr. School Operated by Department of Juvenile Services.***

MSDE should comment on how it developed this estimate for special education services for these students and why it believes \$3.5 million is an appropriate amount for this contract.

For purposes of providing special education services at Hickey, MSDE has the roles of both the LEA and MSDE.

MSDE projections for special education services at Hickey are based on two cost components: direct services and related services.

Direct services are related to staffing costs for special education that are not duplicative of the regular education staffing or residential services. All staff positions, to be provided by a vendor, are directed 100% to students with special education IEPs. Related services are services mandated for coverage if the student's IEP identifies the services as necessary for the student to be able to receive educational services. Free Appropriate Public Education (FAPE) is required to be fully provided through the educational program.

Given the nature of the population at the Hickey School, youth who are already in contact with the Juvenile Justice system, MSDE determined that these youth would have behavioral histories and needs beyond that of a "typical" special education student. Estimates of the types of staff and staff hours are based on MSDE's knowledge of the needs of students with similar severe needs, including youth diagnosed with emotional disturbance and treated at Sheppard-Pratt/Forbush school and hospital in Baltimore County. During FY 2004, the tuition rate for a nonpublic day student at Sheppard-Pratt was \$47,000 annually. Based on an estimated 60 full time equivalent students (FTE), MSDE calculated \$2,820,000 for the expense base for these students. At any point in time, these 60 FTEs could be a much larger number of students needing services. MSDE has estimated a budget of \$3,500,000 to account for the lack of certainty in the number of students to receive services and the possibility that MSDE would incur additional costs for students with extraordinary needs.

MSDE is in the process of finalizing a Request for Proposal (RFP) for a vendor to operate the special education services at the Hickey School. The MSDE Procurement Department is of the opinion that the RFP can be completed in a timely manner such to have a vendor in place to begin providing services in July 2004.

MSDE should comment on how it developed its staffing projections based on estimated average daily populations and why it believes this level of staffing is necessary for this program. MSDE should also comment on whether it believes it can successfully recruit this staff cohort by July 2004.

The staffing patterns for the Charles H. Hickey Jr. School were developed on the basis of a 12 to 1 student teacher ratio. That is the traditional staffing pattern for alternative schools and takes into account the behavioral and learning needs of the students. There is a staff of twenty classroom teachers for 240 students. Because of intense student mobility - MSDE projects seeing at least 1100 different students each year – and because of the demonstrated remedial needs of the student population, instruction will be largely offered on a one-on-one basis with some small group instruction. This necessitates the presence of a teacher's aide to coordinate individual assignments, tutor students, maintain individualized student records and class work files, and assist with classroom management for a very challenging student group. Each classroom teacher and each librarian has been assigned a teacher's aide.

The remaining staffing is also a reflection of the specialized nature of the student body and the intense mobility of the students. As previously noted, given the turnover rates in the three discrete programs, we expect to serve at least 1100 students on the three campuses of the Hickey School each year. Additionally, on an annual basis MSDE will provide educational programming for an estimated 1200 students in the short-term Graduated Sanctions Program. As noted in the staffing plan, we allotted one media specialist for the highly mobile detained population. This media specialist will also provide regular classes in job readiness and occupational awareness. One media specialist will cover the remaining two campuses plus the Graduated Sanctions Program as well as processing all library acquisitions.

There is one transition life skills teacher for the detained population, and one additional for the two remaining campuses and the Graduated Sanctions Program. This position will provide assistance to the students as they plan for return to the community.

There is one proposed psychologist, one pupil personnel worker, one social worker, one diagnostic evaluator for all occupational students, and one guidance counselor for all students on all three campuses. This is hardly excessive, and considering the intense student mobility, it could become an unmanageable workload for those positions. MSDE planners further economized by splitting academic and occupational staff between the impact and the secure placement campuses.

The high volume of student turnover and the need for enhanced record keeping in light of federal No Child Left Behind (NCLB) legislation necessitates the special education records clerk and the registrar. The registrar will be charged with obtaining student records from the student's last school within 5 days, and forwarding student records to receiving community schools within 5 days.

MSDE believes that it can successfully recruit the staff cohort necessary to operate the Hickey School program by July 2004. The Correctional Education Program at MSDE has successfully opened other new programs with the cooperation of MSDE's Human Resources staff. Draft position descriptions, recruitment announcements, and interview questions have been readied. Interview teams have been identified. There have been a number of inquiries from interested applicants, and recruiting efforts have been initiated, from MSDE's

extensive network of higher education teacher education programs and professional associations.

MSDE should update the committees on these negotiations and discuss how it will fund the advance team if a supplemental deficiency is not available.

MSDE has worked as creatively as possible to have all critical positions in place for the opening of MSDE's education program at the Charles H. Hickey Jr. School in July 2004. The advance team is needed to customize curriculum frameworks for the teaching staff; to facilitate course and space assignments for staff; to receive, process, and place furniture and instructional materials; and to hire the remaining 60 staff members. MSDE has established a planning model using the advance team for at least 10 weeks. Should the team not be in place by mid April, MSDE's education program implementation for the Charles H. Hickey Jr. School would be delayed by at least 10 weeks.

MSDE should comment on whether the lease-purchase agreement will increase the total costs of the equipment, and if so, provide an estimate of the increase.

MSDE plans to enter into a three-year lease-purchase plan through the Treasurer's Office for eligible equipment and furniture. At an estimated 5% interest rate, the cost of the financing will be approximately \$82,250 over the three-year lease term.

MSDE should comment on how it developed the estimate of \$974,000 for relocatables in fiscal 2005.

MSDE has continually refined its thinking in terms of the facilities needs at the Hickey School. We began with an analysis of space needs and configuration, based on the educational programming that we plan to implement. Our operating budget request contained a placeholder for expected but undefined facilities improvements. Once more fully defined, the facilities needs were largely accommodated through our capital budget request. The Governor's five-year Capital Improvements Plan includes nearly \$6 million over two years for major renovations and the construction of a new classroom building.

As the capital planning and budget development process continued, it became clear that relocatables, by their nature, are not eligible for capital funds. We also refined our thinking in terms of the staging of the capital projects, preferring to do the construction work in unoccupied buildings. We also learned more about how relocatables are leased, the set-up costs involved, and the benefits of standard-sized units rather than custom-sized units.

Each new development impacts our estimated costs for relocatables. As the multi-year nature of the capital improvements became clearer, we were able to determine the timing of the relocatables, both in terms of initial set-up and duration. Using standard sizes is less expensive than custom sizes, but our educational programming (and therefore square footage needed) had to be adjusted to accommodate standard sized units, resulting in an increased total square footage. Amortizing the costs of set-up in the multi-year lease with

the relocatable vendor reduces the initial costs, but increases the on-going costs. Site plan expenses and utilities connections are still not certain.

Given these circumstances, MSDE respectfully requests some degree of latitude in the budgeting for these structures.

DLS recommends reducing funds by \$2.3 million. This reduction would provide \$5.2 million for operations at the Hickey School.

MSDE's proposal for the educational program at the Hickey School is intended to "represent a significant departure from current practice," initially at the Hickey School, and then, statewide, throughout the juvenile services system. It is the aim of MSDE's proposal to drastically improve current practice, thereby eliminating the deficiencies in educational services identified in past Performance Audits and numerous complaint investigations.

The DLS proposed spending plan for educational services at Hickey assumes that current spending is adequate. Past performance would indicate that this is not the case. It is assumed that MSDE's educational program at the Hickey School will be a model for the provision of educational services to incarcerated youth wherever their detention facilities are located.

The MSDE program, developed with input from numerous state and national educators, includes adequate but not exorbitant, resources to appropriately address the educational needs of these students and ensure that MSDE can effectively implement the new standards, assessments, and accountability requirements under NCLB at the Charles H. Hickey, Jr. School.

DLS also recommends prohibiting the funding in the nonpublic placements budget for the Hickey School to be expended on special education students at Hickey.

MSDE strongly disagrees with this recommendation. House Bill 860 (2003) State Government – Department of Juvenile Services – Charles H. Hickey Jr. School specifically authorizes the State Department of Education to use nonpublic special education funds under Section 8-415 of the Education Article for contracted services necessary to deliver special education and related services to identified students with disabilities placed at the Charles H. Hickey, Jr. School. These funds are necessary in order to fully comply with the entitlement to special education and related services under federal and State statutes.

2. \$20 Million in Medicaid School-based Health Services Funding Contested.

MSDE should comment on the status of negotiations with CMS regarding the findings and the repayment recommendation. MSDE should also comment on whether it has developed a repayment schedule and how such a schedule would be phased in.

In 2002, the Office of the Inspector General (OIG) audited Maryland's school based services in the eight jurisdictions listed in analyst's report (page18). Of the eight jurisdictions

audited, the OIG identified findings in five jurisdictions (Anne Arundel, Baltimore, Prince George's, and Wicomico Counties and Baltimore City). These five jurisdictions were attributed with nearly \$20 million in findings based upon errors found in record reviews conducted during the audit. MSDE and the Department of Health and Mental Hygiene (DHMH), the State Medicaid agency, reviewed the errors, determined the percent of error for each of the five school systems, and the corresponding amount of payback that is shown in the analyst's report.

At this time, local school systems have requested that funds not be withheld, as the negotiating process may be lengthy. When all options have been exhausted and direction from the Centers for Medicare and Medicaid Services (CMS) has been received regarding the amount of any final payment, MSDE and DHMH will develop a plan regarding the manner and schedule of payback. If a payback is required, please be aware that future Medicaid reimbursable funds will be withheld from future payments. Maryland will not be required to actually "payback" the money, rather it will be withheld from future payments from Medicaid to Maryland for the delivery of school-based health related services.

Since DHMH's response to CMS on June 20, 2003, DHMH continues to work with CMS to provide any additional information requested. CMS recently requested a statement from the Attorney General attesting to the fact that the State's requirements for speech and language pathologists are equal to or exceed the federal requirements for that group of specialists. If Maryland's requirements are equivalent to or higher than federal requirements, it may impact the findings of the audit and the payback amount. The Attorneys General from DHMH and MSDE have developed a joint response that is currently in the process of being approved for submission to CMS.

DHMH has indicated their commitment to negotiating a settlement and/or appealing the findings. MSDE and DHMH continue to work collaboratively in their efforts to reach an agreement with CMS regarding the report findings and the amount of the payback.

RECOMMENDED ACTIONS

1. *Delete funding and PINs for charter school program administration. (\$78,501)* - OPPOSE

The budget request for a dedicated staff person and support personnel is to provide technical assistance, implement an appeals process, and disseminate information to the public for the Maryland Public Charter School Program. These positions will ensure that both the local boards and the individual charter schools fulfill their roles and responsibilities. In addition, this request provides MSDE with the necessary resources to fulfill its responsibilities in the event that the MSBOE becomes a chartering authority.

There is evidence of considerable interest in charter schools throughout Maryland. In conducting a statewide review, there are 37 groups of parents and community organizations

in 11 of Maryland's LEAs that are in one stage or another of completing applications to open charter schools. We anticipate a number of charter schools opening in the 2003-2004 school year and no fewer than 30 charter schools will be established statewide by the 2006-2007 school year.

It is necessary for MSDE to expand resources to provide high quality technical assistance and consultation to both local school systems and charter school operators. MSDE will create a Public Charter School Office for the purpose of providing technical assistance as required by the Charter School Act of 2003, and, when, under certain circumstances, the MSBOE is authorized to act as a chartering authority concerning schools designated as restructured schools. The staff of the Public Charter School office will also provide consultation through regional meetings, phone conferences and visits regarding the availability of waivers to charter school operators.

Currently, MSDE does not have staff that can be re-assigned to manage and operate the Public Charter School Office. With the number of charter schools anticipated to be operational in the next two years, it is essential that dedicated staff be available to disseminate best practices and technical assistance information about planning, designing and implementing a charter school program.

2. *Reduce funds for education program at Charles H. Hickey, Jr. School. (\$2,329,893)*
- OPPOSE

MSDE strongly opposes this recommendation. MSDE's proposal for the educational program at the Hickey School is intended to "represent a significant departure from current practice," initially at the Hickey School, and then, statewide, throughout the juvenile services system. It is the aim of MSDE's proposal to drastically improve current practice, thereby eliminating the deficiencies in educational services identified in past Performance Audits and numerous complaint investigations.

The DLS proposed spending plan for educational services at Hickey assumes that current spending is adequate. Past performance would indicate that this is not the case. It is assumed that MSDE's educational program at the Hickey School will be a model for the provision of educational services to incarcerated youth wherever their detention facilities are located.

The MSDE program, developed with input from numerous state and national educators, includes adequate but not exorbitant, resources to appropriately address the educational needs of these students and ensure that MSDE can effectively implement the new standards, assessments, and accountability requirements under NCLB at the Charles H. Hickey, Jr. School.

3. *Delete funds for administration of nonpublic textbook program. (\$90,000)*

MSDE has effectively managed this program on limited resources since fiscal 2001, using a 3% administrative allocation. If the program continues to be funded, MSDE needs these administrative funds.

4. *Reduce funding for purchase and lease of vehicles. (\$41,352) - OPPOSE*

MSDE currently has a fleet of 81 vehicles. The vehicle replacement policy already focuses the limited resources on those vehicles with mileage over 100,000 and those that pose a safety hazard. Eliminating these funds would essentially require us to reduce our fleet size by three vehicles, which may not be the most cost-effective measure, given the thousands of business miles traveled each year by MSDE employees.

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